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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,220	07/07/2003	Donald Gene Bishop	ABIS.001	8549

7590 06/29/2004

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EXAMINER

SANDY, ROBERT JOHN

ART UNIT	PAPER NUMBER
3677	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/615,220

Applicant(s)

BISHOP, DONALD GENE

Examiner

Robert J. Sandy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-31 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 07/07/2004.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statement filed 07 July 2003 contains a typographical error where U. S. Patent No. 5,337,547 (by Chennault) was listed on applicant's Form PTO-1449 instead of the correct U. S. Patent No. 5,337,457. Therefore, the correct number '5,337,457' has been indicated on the Form PTO-1449, and "5,337,547" has been lined out.

### ***Claim Objections***

Claims 23, 24 and 27 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. In the instant case, recitation of (claim 23) "The first cover of claim 16 wherein the top and the slotted back may be engaged by a plurality of first posts." and (claim 24) "The second cover of claim 16 wherein the top and the slotted back may be engaged by a plurality of second posts." do not further limit the preceding claim 16 since an intended use phrase "may be" does not set forth any structural requirement of the claimed invention.

In claim 27, lines 12 and 15, each recitation of the phrase "an slot" should be changed to - a slot - - for proper grammar.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12 and 16-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, as to the following:

In claim 12, line 1, there is no antecedent basis for "the top". Without a proper antecedent of *a top* in the claim, it is not understood what structure of "the top" is in reference to.

In claim 16, lines 12 and 15, each recitation of "the base" is indefinite since it does not distinguish between the "first base" and the "second base".

In claim 16, line 12, there is no antecedent basis for "the slot".

In claim 16, lines 15 and 16, recitation of "wherein the base comprises a slot and an opening wherein the slot is adapted for passage of a group of threads affixing the second one of the plurality of shirt buttons to the shirt" renders the claims indefinite since the subject matter is not understood what structure it is in reference to in view of the limitations of lines 12-14.

In line one of each of claims 23 and 24, there is no antecedent basis for "the top". Without a proper antecedent of *a top* in the claim, it is not understood what structure of "the top" is in reference to.

In claim 27, lines 12 and 15, each recitation of "the base" is indefinite since it does not distinguish between the "first base" and the "second base".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 14-28, 30 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Sullivan (U. S. Patent No. 374,715).

Concerning claims 1-10, Sullivan ('715) discloses a (garment) necktie control device capable for use with a shirt having a plurality of shirt buttons and a necktie having a necktie label comprising: a first cover (one of the two hooks having back A and front B) capable of being adapted for engagement to and enclosure of a first one of the plurality of shirt buttons; a second cover (the other one of the two hooks) capable of being adapted for engagement to and enclosure of a second one of the plurality of shirt buttons; a flexible connector (chain F) engaged to the

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first cover and the second cover and wherein the first cover or the second cover capable of being adapted for passage between the necktie label and the necktie;

(concerning claims 2, 16 and 27) the first cover further comprising a front (A) hingedly (i.e., integrally hinged ) connected to a back (B);

(concerning claims 3, 16 and 27) the second cover further comprising a second front (A) hingedly connected to a back (B);

(concerning claims 4, 16 and 27) the back further comprising a slot (opening C) adapted for passage of a group of threads affixing the first one of the plurality of shirt buttons to the shirt;

(concerning claims 5, 16 and 27) the back of claim 3 further comprising a slot (opening C) adapted for passage of a group of threads affixing the second one of the plurality of shirt buttons to the shirt;

(concerning claims 6, 17 and 30) the connector comprises a chain (F);

(concerning claims 7, 18 and 27) the chain further comprising a first end and a second end wherein the first end is connected to the first cover by a first ring (the chain end link) and the second end is connected to the second cover by a second ring (the chain end link).

(concerning claims 8, 19 and 27) the first front further comprising a first flat circular top area (circular area of A as shown in Figs. 1 and 2);

(concerning claims 9, 20 and 27) the second front further comprising a second flat circular top area (circular area of A as shown in Figs. 1 and 2);

(concerning claims 10, 21 and 28) the first cover and the second cover are identical;

(concerning claims 23 and 24, so far as definite) the tops and the slotted backs of each of first and second covers may be engaged by a plurality of respective first and second posts;

(concerning claims 14, 25 and 27) the first back further comprising a first hinge (integral hinge between the front B and back A) that is of unitary construction with the first back; and

(concerning claims 15, 26 and 27) the second back further comprising a second hinge that is of unitary construction with the second back; and

(concerning claim 31, Sullivan ('715) disclosed a necktie control device comprising a set of two covers (hooks having backs A and fronts b) adapted for covering and engaging a corresponding set of two buttons on a shirt wherein the two covers are flexibly connected (via chain F).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sullivan ('715). Sullivan ('715) discloses the claimed invention except for wherein the length of the connector is in the range of approximately 3-½ inches to 4 inches. It would have been an obvious matter of design choice to one of ordinary skill in the art at the time the invention was made to have provided a length of about 3-¼ inches to 4 inches of chain for Sullivan's device since a length of about 3-¼ inches to 4 inches of chain would be adequate spacing of the two hooks for attaching onto a garment, and it appears that the operation and employment of Sullivan's device would not be altered.

### *Allowable Subject Matter*

Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### *Conclusion*


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Button cover structure is represented by Anderson (U. S. Patent No. 3,777,336), Angeli (U. S. Patent No. 5,337,584), and Gould (U. S. Patent No. 5,621,951). Necktie holder structure is represented by Riedler (U. S. Patent No. 3,042,983), Graef (U. S. Patent No. 5,216,785), and Campella et al. (U. S. Patent No. 5,245,708).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Sandy whose telephone number is 703-305-7413. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**ROBERT J. SANDY**  
**PRIMARY EXAMINER**

Robert J. Sandy  
Primary Examiner  
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